

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SWIFT TRANSPORTATION CO., INC.**

**Respondent,**

**-and-**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

**Charging Party.**

**Case No. 21-CA-38735**

**RESPONDENT SWIFT TRANSPORTATION CO., INC.'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED  
DECISION AND ORDER**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Swift Transportation Co., Inc. ("Respondent") hereby files these Exceptions to the Recommended Decision and Order of the Administrative Law Judge ("ALJ").

**EXCEPTIONS TO FINDINGS OF FACT/ANALYSIS**

1. Respondent excepts to ALJ Parke's finding that Obray asked a group of on-the-clock employees whether their meeting "had to do with union organization." (ALJ 5:31-32)

2. Respondent excepts to ALJ Parke's finding that it was reasonable to infer that Fitzsimmons "was aware that Mr. Gonzalez was the employee accused of being rude to Mr. Moyes." (ALJ 12:44-49)

3. Respondent excepts to ALJ Parke's finding that the meeting between Diaz, Fitzsimmons and Donahue was "not for investigative or evaluative purposes." (ALJ 28:1-5)

4. Respondent excepts to ALJ Parke's finding that Respondent had "no zero-tolerance policy" with regard to false applications. (ALJ 28:27-29)

5. Respondent excepts to ALJ Parke's finding that "Respondent must have inferred" union support based on Gonzalez's questions during an employee meeting. (ALJ 29:49-52)

### **EXCEPTIONS TO LEGAL CONCLUSIONS**

6. Respondent excepts to ALJ Parke's finding and conclusion that Obray's statement to drivers restrained, coerced, or interfered with the employees' Section 7 rights. (ALJ 21:1-2)

7. Respondent excepts to ALJ Parke's finding and conclusion that Obray's question to drivers went beyond a "legitimate purpose." (ALJ 21:4-5)

8. Respondent excepts to ALJ Parke's finding and conclusion that Obray's statement to drivers violated Section 8(a)(1) of the Act. (ALJ 21:10-11)

9. Respondent excepts to ALJ Parke's finding and conclusion that General Counsel carried its burden of proof under *Wright Line* with regards to Diaz's termination. (ALJ 27:22-24)

10. Respondent excepts to ALJ Parke's finding and conclusion that Respondent must prove that it would have implemented Marco Diaz's termination in the absence of any protected activity. (ALJ 27:25-26)

11. Respondent excepts to ALJ Parke's finding and conclusion Respondent's business judgment was outweighed by the possibility that "retention was a viable option." (ALJ 27:48-49)

12. Respondent excepts to ALJ Parke's finding and conclusion that an adverse inference was proper because Respondent did not interview Diaz for an investigatory or evaluative purpose. (ALJ 28:10-11)

13. Respondent excepts to ALJ Parke's finding and conclusion that General Counsel proved "Respondent bore animus toward Mr. Diaz' protected activities." (ALJ 28:11-12)

14. Respondent excepts to ALJ Parke's finding and conclusion that *Overnite Transportation, Inc.*, 343 NLRB 1431 (2004) is not directly on point. (ALJ 28:24-27)

15. Respondent excepts to ALJ Parke's finding and conclusion that the lack of evidence introduced by either party as to false application discharge comparators works to Respondent's disadvantage, not General Counsel's. (ALJ 28:37-39)

16. Respondent excepts to ALJ Parke's finding and conclusion that Respondent violated the Act when it terminated Diaz's employment for submitting a false application. (ALJ 28:36-39)

17. Respondent excepts to ALJ Parke's finding and conclusion that General Counsel carried its burden of proof under *Wright Line* with regards to Diaz's termination. (ALJ 29:3-4)

18. Respondent excepts to ALJ Parke's finding and conclusion that Respondent must prove that it would have implemented Salvador Gonzalez's termination in the absence of any protected activity. (ALJ 29:28-30)


19. Respondent excepts to ALJ Parke's finding and conclusion that Respondent was required to consider mitigating factors related to Gonzalez's terminations prior to terminating him. (ALJ 30:31-36)

20. Respondent excepts to ALJ Parke's finding and conclusion that Respondent allowed employees to explain away their employment application omissions when caught in a lie. (ALJ 30:31-36)

21. Respondent excepts to ALJ Parke's finding and conclusion that Respondent violated the Act when it terminated Gonzalez's employment for submitting a false application. (ALJ 30:38-40)

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

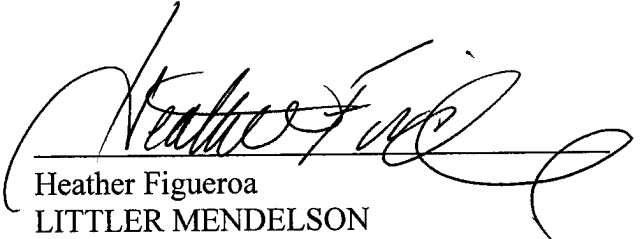
I hereby certify that a copy of Respondent's Exception to the Decision and Order of Administrative Law Judge was submitted by e-filing to the Division of Judges of the National Labor Relations Board on March 1, 2010.

The following parties were served via electronic mail:

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